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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/753,719 12/13/96 DELDUCA

6 PCDA673

ASM1/0121

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EXAMINER

ART UNIT

PAPER NUMBER

1306

DATE MAILED: 01/21/98

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 3-17-97
5-18-97
6-27-97 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☒ Notice of References Cited by Examiner, PTO-892.
- ☒ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☒ Notice of Art Cited by Applicant, PTO-1449. (45/104)
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐

Part II SUMMARY OF ACTION

- ☒ Claims 1-15 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
- ☐ Claims _____ have been cancelled.
- ☐ Claims _____ are allowed.
- ☒ Claims 1-15 are rejected.
- ☐ Claims _____ are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.
- ☒ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
- ☐ Formal drawings are required in response to this Office action.
- ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
- ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
- ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
- ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
- ☐ Other

EXAMINER'S ACTION

Art Unit: 1306

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breen et al in view of Hayhurst et al, and if necessary, in view of Garwood patent 4,840,271.

Breen et al disclose cuts of raw meat enclosed in a first package (overwrap tray) that is oxygen permeable because of holes and slits, second package (barrier bag), modified atmosphere of carbon dioxide flushing gas and oxygen scavenger (claim 3).

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The claims differ from Breen et al in requiring an oxygen uptake accelerator. It would have been obvious to one of ordinary skill in the art to have modified the Breen et al package by adding such an accelerator, as suggested by Hayhurst et al (see catalyst 18), in order to provide a controlled, long-term release of oxygen scavenger over the storage life of the package. Note that Hayhurst et al in column 6, lines 40-42 suggest the combination of a modified atmosphere and an oxygen scavenger.

If necessary, it would have been obvious to have manufactured the overwrap material of the inner package of Breen et al with a material, that is itself oxygen permeable, as taught by ('271, to provide for faster exchange of air between interior and exterior of the trays while simplifying packaging manufacture by requiring fewer, or eliminating, the slits and/or holes.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Garwood patents 4,685,274 and 5,226,531 are of interest for recitation of specific materials that may constitute inner and/or outer package means.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Drodge whose telephone number is (703) 308-0403. The examiner can normally be reached on Monday - Friday from 8:30 AM to 5:00 PM.

~~If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, , can be reached on (703) -~~ The fax phone number for this Group is (703) 305-3601.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0651.

Joseph Drodge/om
January 15, 1998

Joseph Drodge
JOSEPH W. DRODGE
PRIMARY EXAMINER
GROUP 1306
1723